

Sales and Excise Tax 2015-2016

Legislation/Regulations

Legislation

P.A. 99-0126 (SB 1548), effective July 23, 2015 – Special Rules for Sourcing Conditional Sales

Amends Section 2-12 of the Retailers' Occupation Tax, which establishes specific sourcing rules for particular types of selling activities (for purposes of State and local tax imposition). The bill amends current provisions specifying the manner in which conditional sales are sourced. It provides that a retailer selling tangible personal property to a nominal lessee or bailee pursuant to a lease with a dollar or other nominal option to purchase is engaged in the business of selling at the location where the property is first delivered to the lessee or bailee for its intended use. Previously, the statute provided that retailers making conditional sales were engaged in the business of selling at the location of the property at the time the parties entered into the conditional sales agreement.

P.A. 99-0335 (SB 1608), effective August 10, 2015 – Changes to the \$100 non-filing penalty imposed under Section 3-3 (a-15) of the Uniform Penalty and Interest Act

Provides that the \$100 penalty for failure to file a transaction reporting return required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act shall be imposed only if the return, when properly prepared and filed, would not result in the imposition of a tax; provides that if the transaction reporting return would result in the imposition of a tax when properly prepared and filed, the return is subject to the provisions of Section 3-3 (a-10) of the UPIA.

P.A. 99-0217 (SB 507), effective July 31, 2015- Bad debt; procedures established for bad debt for taxes on purchases made through private label credit cards.

Provides that a retailer is relieved from liability for any tax that becomes due and payable if the tax is represented by amounts that are found to be worthless or uncollectible, have been charged off in accordance with generally accepted accounting principles, and have been claimed as a deduction pursuant to Section 166 of the Internal Revenue Code on the taxpayer's federal income tax return. The new law contains procedures governing bad debt claims for taxes on purchases made through a private label credit card.

Regulations

- Shipping and Handling – 130.415, 130.410; proposed at 39 Ill.Reg. 11865 (August 28, 2015). These regulations implement the decision in Kean v. Wal-Mart Stores, Inc., 235 Ill.2d 351 (2009). Regulations were considered, with no objection issued, at the March 8, 2016 meeting of the Joint Committee on Administrative Rules.

- “Click Through Nexus” – 150.201; rules are currently posted on the Director’s Advisory Group website for comments. The “click through nexus” provisions of the Use Tax Act contain a rebuttable presumption of nexus. Amendments to Section 150.201 detail administrative procedures for the rebuttable presumption.
- Rolling Stock – 130.340; rules will be amended to address issues arising in administration of the rolling stock exemption, specifically in regards to those trips or miles which qualify as interstate movements; rules will also be amended to reflect recent statutory changes which provide that the test for aircraft and watercraft is the same test used for motor vehicles.
- Medical Cannabis Cultivation Privilege Tax Law - New Part 429. New rules have been promulgated to implement the tax paid by cultivators of medical marijuana. Recent emergency rules were adopted to assist cultivators in calculating tax due on infused products and concentrates; permanent regulations on the same were proposed simultaneously. Proposed rules published at 40 Ill. Reg. 3173 (February 19, 2016); emergency rules published at 40 Ill.Reg. 3305 (February 19, 2016). Emergency rules considered, with no objection, at March 8, 2016 meeting of the Joint Committee on Administrative Rules.
- New Sourcing Rules for Conditional Sales – local tax regulations governing sourcing of sales (Section 270.115 is a representative section) will be amended to reflect the new sourcing rules for conditional sales enacted by P.A. 99-0126 (see above legislative summary).
- Bad debt – Section 130.1960 – rules will be amended to reflect the bad debt provisions of P.A. 99-0217 (see above legislative summary).